In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 1705(S/B)/2002

1- Sm. Kiran Sharma,
D/o Devki Nandan Sharma
R/o Anil Niwas Anand Bag Talla
Gorakhpur, Haldwani, District Nainital

2- Amin Asgar S/o Sri Mohd Aslam
R/o Durga Colony, Girital,
Kashipur District U.S. Nagar,

3- Digpal Singh Rawat S/o Keshar Singh
R/o Tehsil Quarter Haldwani
District Nainital,

4- Devendra Singh Bisht S/o Jiwan Singh
R/o Bisht Bhawan Kaloks, Kathgodam
District Nainital,

5- Ashok Kumar Verma,
S/o Ganesh Lal Verma,
R/o Gopi Sadan, Bari Mukhani Haldwani
District Nainital,

6- Hemant Kenwal S/o Diwan Singh
R/o Canal Road, Malla Gorakhpur
Tikonia Haldwani District Nainital,

7- Hema Joshi R/o Jyolikot
District Nainital ……..Petitioners.

Vs,

District Judge, Nainital
District Nainital ……Respondent.

Sri V.B.S. Negi learned counsel for the petitioners.
Sri Sharad Sharma learned counsel for respondent.

Date of Judgment: 25-05-2004

ORAL JUDGMENT**(Per: Hon'ble Irsahd Hussain,J.)**

By means of this writ petition under Article 226 of the Constitution of India the petitioners prayed for issuance of a writ, order or direction in the nature of mandamus directing the respondent to issue the appointment letter to them as they have been selected against existing vacancies of class-II posts.

2- An advertisement was issued and published in daily Newspaper on 24-11-2001 for the appointment of class-III post in the office of

the District Judge, Nainital, Posts advertised were 41 and after competitive examination result of the selected candidates was declared and published in the Newspaper on 27-12-2001 and the names of the petitioners were also among the successful candidates. Out of these selected candidates appointments were issued to 20 only and the roll numbers of these candidates were also published in the Newspaper dated 27-12-2001. These facts are not in dispute.

3- Petitioners alleged that despite the advertisement for 41 vacant posts of the class-III only 20 vacancies have been filled in and the petitioners have not been issued appointment letters despite the vacancies existing in the cadre. The life of the list of the selected candidates under the relevant rules is only one year and therefore alleging arbitrariness and discriminatory attitude against them the petitioners filed the writ petition on 27.11.2002 i.e. before the expiry of period of the one year from the date of the publication of the selected list of the candidates making the prayer aforesaid so as to get the appointment against class-III posts in the judgeship.

4- The respondent resisted the petition and filed counter affidavit wherein it has, inter alia, been alleged that although the 41 posts were advertised the break up of the posts has been as below:-

(a) 20 posts were to be filled by direct recruitment from the selected list,

(b) 8 posts were expected to be created for the court of Civil Judge (J.D.) to be established at teshil Ram Nagar,

(c) 6 candidates were proposed to be selected to keep them in the waiting list for recruitment in the event of posts falling vacant on retirement of some employees or some of the employees voluntarily seeking retirement and some employees being retired compulsorily.

5- According to the respondent 20 selected candidates were appointed against exiting vacancies and the allegation of the petitioners that there were vacancies exiting in the cadre is absolutely misconceived; that there has not been any arbitrariness in giving appointment to the 20 selected candidates and that the

appointments were given by strictly adhering to the reservation policy and the prevalent roster and that in view of sub-rule (3) of Rule 14 of the Subordinate Civil Courts Ministerial. Establishment Rules, 1947 the writ petition has been rendered infructuous after 27-12-2002 i.e. after expiry of a period of one year from the date of the publication of the select list of the candidates and the names of the petitioners and others who have not been given appointments stand automatically removed from the register of selected candidates. The respondent therefore submitted that the petition is liable to be dismissed with costs.

6- It is not in dispute that the life of the select list of the candidates is one year. There is nothing on record to indicate that there were vacancies existing in the cadre of class-III in the judgeship even after the appointment to 20 selected candidates had been given. Sub rule (3) of Rule 14 of the Subordinate Civil Courts Ministerial Establishment Rules, 1947 reads as under:-

> "(3) If any such candidate has not been given an appointment (offered in strict order of seniority according to the list in the bound register prescribed under sub-rule (1) within one year from the date of his recruitment, his name shall be automatically removed from the register of recruited candidates and he must then take his chance with others for recruitment again in a subsequent year."

7- The break up of the posts given by the respondents in the counter affidavit does not admit of any infirmity because nothing has been shown by the petitioners that when advertisement was issued the vacancies existing were 41. As stated above the vacancies were advertised keeping in view the other factors although there were only 20 posts vacant at that time and therefore there is no merit in the argument of the learned counsel for the petitioners that the petitioners have got vested right of appointment after they were selected as a result of competitive examination against 41 vacancies advertised. Since the petitioners have failed to show more posts lying vacant in the cadre the select list after expiry of period of one year ceased to be

effective and the names of the selected candidates who have not been given appointment for want of vacancies stand removed.

8- The Apex Court in the case of **Vinodan T. and others Vs. University of Calicut and others; 2002 A.I.R. S.C.W. 2025** laid down the legal proposition that 'persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the concerned authority to decide how many appointments should be made. However the selected candidates have a right to compel such authority (i) not to make appointments by traveling out side the list and (ii) to make the selection for appointment strictly in the order the candidates have been placed in the list.' In the instant case as stated above the appointments have been given against 20 existing vacancies and the petitioners have not alleged that the respondent made appointments from out side the select list or that the merit order of the list in giving the appointment has not been followed. Therefore, in the peculiar facts of the case the petitioners have no cause to complain that they have arbitrarily been deprived of appointment in the vacancies of class-III posts in the judgeship. The petitioner's name finding place in the select list do not give them a vested right to be appointed when no further vacancies exist and the select list had expired its life period. This apart, the petitioners have failed to show that the appointments in the cadre of class III in the judgeship have been made in violation of the relevant rules and in view of this matter also the petitioner lack merit and the same is liable to be dismissed.

9- The writ petition is thus dismissed. There will be no order as to costs.

(Irshad Hussain, J.)

25-5-04
ISB